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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 JO FAY and THOMAS FAY,)

13 Plaintiffs,)

14 v.)

15 UNITED STATES OF AMERICA,)

16 Defendant.)
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No. C 04-3588 CRB and C 05-1481 CRB

STIPULATION AND [PROPOSED] ^{11/10}
ORDER APPROVING COMPROMISE
SETTLEMENT

28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT
C 04-3588 CRB
C 05-1481 CRB

1 IT IS HEREBY STIPULATED by and between Plaintiffs Jo Ann Fay and Thomas Fay
2 (collectively "Plaintiffs") and Defendant United States of America, as follows:

3 1. The parties do hereby agree to settle and compromise Jo Fay and Thomas Fay v.
4 United States of America (Northern District of California Case Number C 04-3588 CRB) and the
5 related case of the same title (Northern District of California Case Number C 05-1481 CRB),
6 under the terms and conditions set forth herein.

7 2. Defendant United States of America agrees to pay to Plaintiffs Jo Ann Fay and
8 Thomas Fay collectively the sum of thirty five thousand dollars and no cents
9 (\$ 35,000 .00), which sum shall be in full settlement and satisfaction of any and all claims,
10 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason
11 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
12 damage to property and the consequences thereof, resulting, and to result, from the same subject
13 matter that gave rise to the above-captioned lawsuit, including any claims for wrongful death, for
14 which Plaintiffs or their heirs, executors, administrators, or assigns, and each of them, now have
15 or may hereafter acquire against the United States of America, its agencies, agents, servants, and
16 employees.

17 3. Plaintiffs and their heirs, executors, administrators or assigns hereby agree to
18 accept the sum listed in paragraph 2 in full settlement and satisfaction of any and all claims,
19 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason
20 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
21 damage to property and the consequences thereof which they may have or hereafter acquire
22 against the United States of America, its agencies, agents, servants and employees on account of
23 the same subject matter that gave rise to the above-captioned lawsuit, including any future claim
24 for wrongful death. Plaintiffs and their heirs, executors, administrators or assigns further agree
25 to reimburse, indemnify and hold harmless the United States of America, its agencies, agents,
26 servants or employees from any and all such causes of action, claims, liens, rights, or subrogated
27 or contribution interests incident to or resulting from further litigation or the prosecution of
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claims by Plaintiffs or their heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement shall not constitute an admission of liability or fault on the part of the United States, its agencies, agents, servants, or employees, and is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

5. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by the Agreement.

6. It is also agreed, by and among the parties, that the settlement amount of thirty five thousand dollars and no cents (\$ 35,000.00) to Plaintiffs collectively represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses and that any attorneys' fees or liens owed by Plaintiffs will be paid out of the settlement amount and not in addition thereto.

7. It is also understood by and among the parties that, pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in connection with this action shall not exceed 25 percent of the amount of the compromise settlement.

8. Payment of the settlement amount will be made by a check drawn on the United States Postal Service for thirty five thousand dollars and no cents (\$ 35,000.00) and made payable to Jo Ann Fay, Thomas Fay and the Law Offices of Bennett, Johnson & Galler.

9. In consideration of this Agreement and the payment of the foregoing amount thereunder, Plaintiffs agree that upon notification that the settlement check is ready for delivery, they will deliver to Defendant's counsel a fully executed Stipulation of Dismissal with prejudice of Jo Fay and Thomas Fay v. United States of America, C 04-3588 CRB and the related case Jo Fay and Thomas Fay v. United States of America, C 05-1481 CRB. Upon delivery of the Stipulations of Dismissal, Defendant's counsel will release the settlement check to Plaintiffs'

1 counsel or his agent.

2 10. Plaintiffs have been informed that payment may take sixty days or more to
3 process, but Defendant agrees to make good faith efforts to expeditiously process said payment.

4 11. The parties agree that should any dispute arise with respect to the implementation
5 of the terms of this Agreement, Plaintiffs shall not seek to rescind the Agreement and pursue
6 their original causes of action. Plaintiffs' sole remedy in such a dispute is an action to enforce
7 the Agreement in district court. The parties agree that the district court will retain jurisdiction
8 over this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

9 12. Plaintiffs hereby release and forever discharge the United States and any and all
10 of its past and present officials, employees, agencies, agents, attorneys, their successors and
11 assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and
12 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in
13 equity, known or unknown, arising out of the allegations set forth in the pleadings in this action.

14 13. The provisions of California Civil Code Section 1542 are set forth below:

15 "A general release does not extend to claims which the creditor does not know or
16 suspect to exist in his favor at the time of executing the release, which if known
by him must have materially affected his settlement with the debtor."

17 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their
18 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and
19 all rights they may have pursuant to the provision of that statute and any similar provision of
20 federal law. Plaintiffs understand that, if the facts concerning Plaintiffs' injuries and the liability
21 of the government for damages pertaining thereto are found hereinafter to be other than or
22 different from the facts now believed by them to be true, the Agreement shall be and remain
23 effective notwithstanding such material difference.

24 14. This instrument shall constitute the entire Agreement between the parties, and it is
25 expressly understood and agreed that the Agreement has been freely and voluntarily entered into
26 by the parties hereto with the advice of counsel, who have explained the legal effect of this
27 Agreement. The parties further acknowledge that no warranties or representations have been
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made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.


Dated: September 26, 2006


JO ANN FAY
Plaintiff

Dated: September 26, 2006

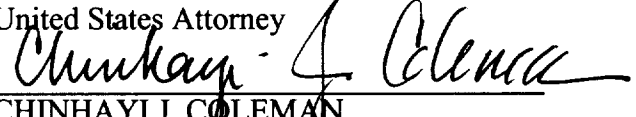

THOMAS FAY
Plaintiff

Dated: September 26, 2006


LAW OFFICES OF BENNETT, JOHNSON & GALLER
RICHARD D. BENNETT
Attorney for Plaintiffs

Dated: September 26, 2006

KEVIN V. RYAN
United States Attorney


CHINHAYI J. COLEMAN
Assistant United States Attorney

[PROPOSED] ORDER

APPROVED AND SO ORDERED.

Dated: October 5, 2006

THE HONORABLE CHARLES R. BREYER
United States District Court

